

## **REMARKS / DISCUSSION OF ISSUES**

Claims 1-16 are presented for consideration. Claims 10-16 are new.

Claims are amended for non-statutory reasons, such as to replace European phraseology. No new matter is added.

### **Objection to the Claims**

The objections to the claims are moot in view of the present amendment to claims 1-9.

### **Rejections under 35 U.S.C. § 101**

The Office Action rejects claims 1-9 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. The Examiner directs Applicants to an OG Notice from 2005.

Applicants respectfully traverse these rejections for at least the following reasons.

The Office Action states that

3. Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Independent claims 1 and 8 appear to be directed to an algorithm for matching pressure distribution pattern. The claims do not produce any tangible results. The practical application of the claimed invention cannot be realized until the output is conveyed to the user. For the result to be tangible it would need to output to a user or displayed to a user or stored for later use. Hence the claims are treated as non-statutory subject matter (See MPEP Sec. 2106). Claims 2-7 and 9 are rejected under 35 U.S.C. 101 base on dependency.

The USPTO Official Gazette Notice dated 22 November 2005, entitled “*Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility*” (“the OG Notice”) merely contains guidelines for patent examiners, and like the MPEP, does not have the full force and effect of law (see the OG Notice, Section I, second paragraph). This notwithstanding, the undersigned attorney has thoroughly reviewed these guidelines and respectfully submits that the rejections of claims 1-9 are not compliant with those guidelines.

At the outset, Section IV of the OG Notice explains in detail the procedures to be followed to determine whether a claimed invention complies with the subject matter eligibility requirement of 35 U.S.C. § 101. The only references to “tangible results” in this procedure appear under Step IV(C) – “*Determine Whether the Claimed Invention Falls Within Sec. 101 Judicial Exceptions – Laws of Nature, Natural Phenomena and Abstract Ideas.*” Not surprisingly, the first thing the Examiner must do under Step IV(C) is to “*determine whether [a claim] covers either a Sec. 101 judicial exception or a practical application of a Sec. 101 judicial exception.*” Only if such a determination is made, does the analysis then proceed to determine if the claimed subject matter is nevertheless still patentable subject matter, for example, because: (1) the claim provides a physical transformation (Step IV(C)(1)(a)); or (2) the claims produces a useful, concrete, and tangible result (Step IV(C)(1)(b)).

Here, the Office Action does not even attempt to determine whether any or all of claims 1-9 cover either a Sec. 101 judicial exception (Law of Nature, Natural Phenomenon, or Abstract Idea) or a practical application of a Sec. 101 judicial exception. Rather, the claims are dismissed as appearing to be directed to an algorithm for matching a pressure distribution, with no analysis or explanation supporting the position that this is a judicial exception. Indeed, Applicant

respectfully submits that none of the claims 1-9 cover any law of nature, natural phenomenon, or abstract idea.

Claims 1-9 are drawn to a system and method for identifying a person. The system method do not cover any law of nature, natural phenomenon, or abstract idea. Accordingly, the entire analysis as to where the claims “*produce a tangible result*” is not even pertinent under the Guidelines, because the claims are not even directed to any Sec. 101 judicial exception in the first place.

Furthermore, even *if* any of the claims 1-9 were directed to a Sec. 101 judicial exception, the Guidelines specifically state that this does not mean that the claim must be tied to a particular machine or apparatus. So there can be no requirement that the “result” of the claimed process must be stored or displayed. Furthermore, the OG Notice defines “tangible” as being the opposite of “abstract.” All that is required is that the claim must set forth a practical application to produce a real-world result. Here, the claims all are practical applications producing the real-world result of identifying a person. More and more techniques there is a need for identifying a person based on certain physical characteristics. Thus, Applicants submit that rather than an abstract result, a tangible result of identifying a person, a real-world result, is provided. Accordingly, assuming arguendo that claims 1-9 were directed to a Sec. 101 judicial exception, the final result at the very least is a tangible result.

Accordingly, for at least these reasons, Applicants respectfully submit that claims 1-9 are all patentable under 35 U.S.C. § 101.

### **Rejections under 35 U.S.C. § 102**

Claims 1-3, 5, 6 and 8 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Speeter* (U.S. Patent 5,479,528). For at least the reasons set forth herein, Applicants respectfully submit that this rejection is improper and should be withdrawn.

At the outset Applicants rely at least on the following standards with regard to proper rejections under 35 U.S.C. § 102. Notably, a proper rejection of a claim under 35 U.S.C. § 102 requires that a single prior art reference disclose each element of the claim. *See, e.g., W.L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303, 313 (Fed. Cir. 1983). Anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference. *See, e.g., In re Paulsen*, 30 F.3d 1475, 31 USPQ2d 1671 (Fed. Cir. 1994); *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990).

Alternatively, anticipation requires that each and every element of the claimed invention be embodied in a single prior art device or practice. *See, e.g., Minnesota Min. & Mfg. Co. v. Johnson & Johnson Orthopaedics, Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992). For anticipation, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *See, e.g., Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 18 USPQ2d 1001 (Fed. Cir. 1991).

Claim 1 is drawn to a system for identifying a person, and features:

*“...means for detecting a distribution of pressures, exerted by at least one foot of the person on a surface, means for storing data of a number of persons, said data comprising a detected pressure distribution pattern and an associated person identification code, and means for comparing a detected pressure distribution pattern with stored pressure distribution patterns until a match of pressure distribution patterns is found.”*

Claim 10 is also drawn to a system for identifying a person and features:

*“...a weighing device adapted to detect a distribution of pressures exerted by at least one foot of the person on a surface; ...and a processor adapted to compare a detected pressure distribution pattern with the stored pressure distribution patterns until a match of pressure distribution patterns is found.”*

Claims 8 and 15, which are drawn to a method of identifying a person include similar features to claims 1 and 10, respectively.

The Office Action directs Applicants to the Abstract, column 3, lines 1-3 and column 9, lines 24-32 of *Speeter* for the alleged disclosure of the noted features of claims 1 and 8. Applicants respectfully disagree.

The reference to *Speeter* discloses force application to a tactile array (touch array) that produces electrical signals. In connection with Fig. 4, the reference discloses piezoresistive and capacitive tactile (touch) arrays. These relate to force calculations on intelligent work surfaces. There is no description of the detecting *pressure distributions* and comparing these *pressure distributions* with stored *pressure distributions*.

Accordingly, the reference to *Speeter* fails to disclose at least one feature of each of claims 1, 8, 10 and 15; and one of ordinary skill in the art would recognize at least one difference between the features of the claims and the reference disclosure.

Because the reference to *Speeter* fails to disclose at least one feature of the independent claims, a prima facie case of anticipation has not been established. Therefore, claims 1, 8, 10 and 15 are patentable over the applied art. Moreover, claims 2-7, 9, 11-5 and 116, which depend from claims 1, 8, 10 and 15, respectively are patentable as a matter of law.

### **Rejections under 35 U.S.C. § 103**

Applicants have considered the rejection of claims 4,7 and 9 in view of *Speeter* and *Wymore*. While Applicants by no means concede the propriety of the rejection, Applicants respectfully submit that the rejection is moot and that claims 4,7 and 9 are patentable over the applied art for at least the same reasons as their respective independent claims.

**Conclusion**

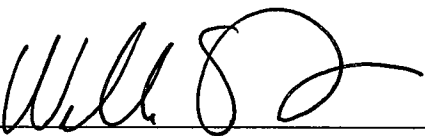
In view the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance.

If necessary, the Commissioner is hereby authorized in this, concurrent, and further replies to charge payment or credit any overpayment to Deposit Account Number 50-0238 for any additional fees, including, but not limited to, the fees under 37 C.F.R. §1.16 or under 37 C.F.R. §1.17.

If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Respectfully submitted on behalf of:

Phillips Electronics North America Corp.



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